



A Self-Profile of Mr. Craig Whilby #195505

In December of 1987, at the tender age of seventeen, I participated in an attempted robbery which ultimately resulted in a felony murder plot* causing the death of another African-American male. Although I didn't participate in the murder in any way, I was convicted and sentenced to Mandatory Life **without** the possibility of parole, at the age of 18. Two other co-defendants were also convicted of this murder. One co-defendant, the principal who committed the murder, is now free. For 18 years I've been very remorseful for his death, the pain I've caused his family and for my role in this horrible crime. I am also sorry for the pain I've caused my own family. My intention was never to end another person's life.

After filing numerous appeals and despite efforts to get out through the court system, I've only come up short. My trial judge, Hon. George W. Crockett II, expressed the following opinion: (1) "Further, it was never maintained that Craig Whilby killed the victim, but that he was an aider and abettor." (2) "The Court is satisfied from the evidence that it heard, the logical and reasonable inferences to be drawn there from that of the assailants involved in this matter, Mr. Williams was the last person to leave the premises and that he in fact was the person who did bludgeon the deceased." Even a signed affidavit from the co-defendant who committed the murder wasn't enough for my freedom.

I'm 36 years old and I seek another chance at life. I've asked God for his forgiveness and I fight daily to get the forgiveness of society. I'm no longer the troubled child I was when I came to prison. I am ready to give something back to society; to make a difference in the world. I have changed.

Criminal Record: None; I'm a first time offender

Educational Background: I received my G.E.D. in 1988 and took advantage of some college credits through the M.D.O.C. (until it was abolished). I held a 3.5 GPA all through high school, up until my last year.

Employment: Prior to my incarceration I worked as a cook at the Mallard Pub, and the 1940 Chop House. Even though I was very young, I started cooking and working early and was always employed. In prison I worked in the Food Service Industry and as a Food Tech tutor. While incarcerated I have received excellent work evaluation reports from recreation to custodial porter, which I'm currently employed as. I've also received a certificate in Culinary Arts.

Goals: My goals are to get back into society and finish my education. I would like to run my own business and/or restaurant. I also wish to reach back and help mentor troubled youths before they get to this place by offering them employment. I would also like to start a family of my own.

Support System: Through God I have been kept in close contact with good family and friends, far too many to name. I have all the support from them one man could ask for. I also have the support of several churches.

*Felony murder plot is when a murder is committed during a felony. It is not a premeditated murder.

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

JUN 12 1990

v

No. 111635

TITUS WILLIAMS,
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

No. 112225

CHARLES SIBERT,
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

No. 113779

CRAIG WHILBY,
Defendant-Appellant.

Before: Gribbs, P.J., and Michael J. Kelly and Shepherd, JJ.
PER CURIAM.

In this consolidated appeal, defendants appeal by right from convictions and sentences arising out of the beating death of Henry Tisbey. Defendant Whilby was convicted by a jury of first-degree felony murder, MCL 750.316; MSA 28.548, and assault with intent to do great bodily harm, MCL 750.84; MSA 28.279. Whilby was sentenced to a life term for the murder conviction and to three to ten years for assault. Defendant Sibert was convicted by a jury of first-degree murder and felony-firearm, MCL 750.227b; MSA 28.424(2). Sibert was sentenced to life plus two years. Defendant Williams was convicted of first-degree felony murder following a waiver trial. Williams was sentenced

to life imprisonment. We affirm as to defendants Sibert and Whilby; we reverse defendant's Williams' conviction and remand for new trial.

There is no merit to defendants Williams' and Sibert's claim that the examining magistrate erred in binding defendants over for trial and denying Sibert's motion to quash the information. We have carefully reviewed the record and find ample evidence from which the magistrate could determine that the charged crimes had been committed and that there was probable cause to believe defendants committed them. People v Duncan, 388 Mich 489, 499; 201 NW2d 629 (1972).

There is no merit to defendants Williams' and Whilby's claim that there was insufficient evidence to support their convictions. In reviewing sufficiency of evidence claims, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. People v Petrella, 424 Mich 221, 268; 380 NW2d 11 (1985); People v Hampton, 407 Mich 354; 285 NW2d 284 (1979), cert den 449 US 885 (1980).

We find the evidence in this case sufficient. The evidence showed that defendant Whilby planned the robbery, carried a lug wrench into the house and, when Jimmie Benson tried to stop Sibert after Sibert's gun misfired, Whilby struck Benson in the head with the wrench. Defendant Williams participated in the robbery and stood guard while his friend Benson begged for his life and was assaulted. Williams prevented decedent Tisbey from leaving during the assault on Benson.

There is no merit to defendant Williams' claim that he was denied a fair trial when the trial court heard unsworn testimony about witness threats prior to Williams' waiver of jury trial. Since Williams did not raise the issue of judicial bias before the trial court, it is not preserved for appellate

review. In any event, there is no evidence that the judge was biased by the testimony and we find Williams' waiver was openly, voluntarily and knowingly made. Crampton v Dept of State, 395 Mich 347, 351; 235 NW2d 352 (1975).

Defendant Sibert was not denied a fair trial by reason of the jury instruction and verdict form. Where, as here, no objection is made to an alleged error in the instruction, the verdict will not be set aside on this basis unless it has resulted in a miscarriage of justice. People v Federico, 146 Mich App 776, 784-785; 381 NW2d 819 (1985), lv den 425 Mich 867 (1986). We find no miscarriage of justice here. We note that use of standard jury instruction in criminal cases is not mandatory. People v Doss, 122 Mich App 571, 578; 332 NW2d 541 (1983), lv den 417 Mich 1100.16 (1983). When read as a whole, the jury instruction here was sufficient. People v Kelly, 423 Mich 261, 277-279; 378 NW2d 365 (1985).

Nor did the prosecutor's comments during closing arguments deny Sibert a fair trial. Since Sibert failed to object to the comments at trial, this issue is not preserved for our review unless the prejudicial effect of the remark was so great it could not have been cured by an appropriate instruction and this Court's failure to consider the issue would result in a miscarriage of justice. People v Foster, 175 Mich App 311, 317; 437 NW2d 395 (1989). No miscarriage of justice occurred in this case.

Finally, defendant Williams argues that the trial court improperly considered the confessions and testimony of the codefendants against Williams and, therefore, should have granted Williams' motion for new trial. We agree.

In this case, defendant Williams' motion for separate trial was granted. Nonetheless, it was agreed that all three defendants would be tried before one judge who would act both as a trier of fact for defendant Williams and as the judge in

codefendants Sibert's and Whilby's jury trial. The testimony of codefendants Sibert and Whilby was admitted as part of their defense but not as part of Williams' defense. Both codefendants inculpated defendant Williams as the last person to leave the house and as the person who actually beat Tisbey to death. Defendant Williams did not testify in his own behalf and the testimony of his codefendants was not admissible in this case.

In its findings of fact in Williams' trial, the trial court stated,

The Court is satisfied from the evidence that it heard, the logical and reasonable inferences to be drawn therefrom, that of the assailants involved in this matter Mr. Williams was the last person to leave the premises at 14114 Young Street and that he in fact was the person who did bludgeon to death R.H. Tisbey. The Court concludes that the Defendant both on the facts and the law committed the offense of murder in the first degree, felony murder, a homicide, unjustifiable and unexcused, during the commission of a felony, armed robbery.

Since it is clear from the record that the trial court improperly relied on codefendants inculcating testimony, reversal of Williams' conviction is necessary. In light of our decision, we need not address defendant Williams' remaining issues.

The convictions of defendants Sibert and Whilby are affirmed. Defendant Williams' conviction is reversed and the matter is remanded for new trial before a different judge.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ John H. Shepherd

Exhibit B

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Criminal Division
Case No. 88-00750

v

Hon. George W. Crockett III

CRAIG WHILBY,

Defendant.

OPINION

On July 20, 1988, Defendant Craig Whilby was convicted, by a jury trial, of felony murder, MCL 75.316; MSA 28.548 and assault with intent to cause great bodily harm MCL 750.84; MSA 28.279. On August 5, 1988, Defendant was sentenced to natural life for the felony murder conviction and thirty-six (36) months to ten (10) years imprisonment for the assault with intent to cause great bodily harm conviction. Defendant appealed as of right. In a per curiam opinion dated June 12, 1990, the Michigan Court of Appeals affirmed defendant's conviction and sentence. The Michigan Supreme Court denied defendant's application for leave to appeal on February 25, 1991. Defendant thereafter filed a Motion for Relief from Judgment which was denied by this Court on March 1, 1993. Defendant now brings a second Motion for Relief from Judgment, pursuant to MCR 6.500 et seq.

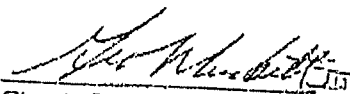
Defendant's Motion is based on a claim of newly discovered evidence in the form of an affidavit from co-defendant Titus Williams stating that he, Williams, was the sole perpetrator in the assault and murder of the deceased.

Defendant's claim is without merit. An affidavit from a person already convicted of a crime is not against the interest of the declarant and is inadmissible into evidence, if offered to exonerate a defendant, absent a high level of corroboration. MRE 804(b). Co-defendant Titus Williams pled guilty to second degree murder on May 7, 1996, before the Honorable Michael F. Sapala. Moreover, "recanting" affidavits have been held to be inherently untrustworthy. See, People v Carter, 197 Mich App 550, 559-562 (1992); People v Barbara, 400 Mich 352 (1977); People v Smallwood, 306 Mich 49, 55 (1943); People v Van Den Dreissche, 233 Mich 38, 46 (1925).

Further, it was never maintained that defendant killed the victim, but that he was an aider and abettor. As a result, co-defendant Williams' affidavit is not inconsistent with the theory under which defendant was convicted. In addition, the Court of Appeals noted that evidence was sufficient to establish Defendant's guilt as an aider and abettor beyond a reasonable doubt. The fact that co-defendant Williams is willing to accept responsibility for his part in the death of the victim does not lessen Defendant's culpability.

For the foregoing reasons, this Court finds that defendant has not satisfied the requirements of MCR 6.508 and therefore DENIES defendant's Motion for Relief from Judgment.

Dated: 12-9-97


Circuit Court Judge

7). That, my silence was maintained for this period of time due to my fear and irresponsibility for my actions, and have recently entered a guilty plea to the charge of second degree murder before the Honorable-Michael F. Sapala on or about May 26, 1996 in which I received 17 to 50 years imprisonment.

8). That, this affidavit is not made out of duress, threat or coercion, but is made out of the discretion to maintain justice in testifying as to the truth as to the cause of R.H. Tisbeys' death in this case, inwhich the prosecutor would not have established or proven as to the primary person responsible, until my recent guilty plea conviction and testimony.

9). That, I, Titus Williams, will testify competently under oath as to the foregoing averments 1 thru 9, and state that this deposition is made to the best of my knowledge, information and belief.

FURTHER DEPONENT SAYETH NAUGHT.

Respectfully,

Titus Williams
Mr. Titus Williams
MDOC ID. NO. #195452
Date: June 5, 1996

Subscribed and sworn to before
me this 6th day of June 1996.

Jay Robert Bales
NOTARY PUBLIC

